

JOURNAL OF THE HOUSE.

Thursday, April 10, 2008.

Met according to adjournment, at eleven o'clock A.M., with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer. Eternal God, we begin today's formal legislative session with a prayer to seek Your guidance and assistance as we organize our legislative and personal agenda for the day. Help us to use our time and talents wisely and productively as we carry out our duties. Inspire us to make decisions which are right, thoughtful and relevant in meeting the needs of people, our communities and the times. May we have a realistic vision to plan for a more peaceful, ethical, happy and just society in the years ahead. Grant us the wisdom to keep all legislative suggestions and all popular media items in focus and in perspective.

Grant your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of allegiance. At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Statement Concerning Representative Fallon of Malden.

A statement of Mr. Rogers of Norwood concerning Mr. Fallon of Malden was spread upon the records of the House, as follows:

Statement concerning Representative Fallon of Malden. MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Fallon of Malden, will not be present in the House Chamber for today's sitting due to his recovering from a recent hospitalization. Any roll calls that he may miss today will be due entirely to the reason stated.

Guests of the House.

St. Mary's Sacred Heart singers. The Chair (Mr. Donato of Medford) then declared a brief recess and introduced a group of third and fourth grade students, including Aya Poirier the granddaughter of Representative Poirier of North Attleborough, from St. Mary's Sacred Heart School in North Attleborough. The students then entertained the members, guests and employees of the House with a rendition of the official song of the Commonwealth "All Hail Massachusetts", words and music by Arthur J. Marsh. They were the guests of Representative Poirier of North Attleborough.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

National Rifle

Resolutions (filed by Mr. Peterson of Grafton and other members of the House) commending the National Rifle Association on the twentieth anniversary of its Eddie Eagle Gunsafe Program; Association.

Resolutions (filed by Ms. Peake of Provincetown) congratulating Andrew M. Nowack on receiving the Eagle Award of the Boy Scouts of America; Andrew M. Nowack.

Resolutions (filed by Mrs. Poirier of North Attleborough) congratulating Kathleen Horton on the occasion of her retirement from the North Attleboro Electric Department; Kathleen Horton.

Resolutions (filed by Mr. Ross of Wrentham) congratulating Jason Brown of Plainville upon his elevation to the rank of Eagle Scout; Jason Brown.

Resolutions (filed by Mr. Ross of Wrentham) congratulating Nicholas Oliverio of Plainville upon his elevation to the rank of Eagle Scout; Nicholas Oliverio.

Resolutions (filed by Mr. Smizik of Brookline) congratulating Dr. Robert Weintraub upon his receipt of the Robert I. Sperber Award for administrative leadership; and Robert Weintraub.

Resolutions (filed by Mr. Turner of Dennis) congratulating officer Thomas M. Grandy on the occasion of his retirement from the Dennis Police Department; Thomas M. Grandy.

Mr. Scaccia of Boston, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mr. Peterson, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Petitions.

Petitions severally were presented and referred as follows:

By Mr. Aguiar of Fall River, joint petition (subject to Joint Rule 12) of Kevin Aguiar and others for legislation to establish a sick leave bank for Manuel M. Affonso, Jr., an employee of the Department of Correction; Manuel Affonso, sick leave.

By Mr. Bosley of North Adams, petition (subject to Joint Rule 12) of Daniel E. Bosley for legislation to expand the jurisdiction of the Adams Fire District located within the town of Adams; Adams Fire District.

By Ms. Malia of Boston, petition (subject to Joint Rule 12) of Elizabeth A. Malia that the building housing the State Laboratory Institute in the Jamaica Plain section of the city of Boston be designated as the William A. Hinton Laboratory; William Hinton Laboratory.

By Mr. Miceli of Wilmington, petition (subject to Joint Rule 12) of James R. Miceli for legislation to expand the definition of the central register for missing children to include certain elderly persons with dementia; Missing persons, central register.

By Mr. Murphy of Burlington, petition (subject to Joint Rule 12) of Charles A. Murphy that the Teachers' Retirement Board be directed to grant certain creditable service to Margaret DeSimone for retirement purposes; Margaret DeSimone, retirement.

By Mrs. Poirier of North Attleborough, petition (subject to Joint Rule 12) of F. Jay Barrows and others for legislation to regulate the clinical application of embryonic stem cell research and enhancing the use of skin for such research purposes; Embryonic stem cells, regulating.

Charlestown Navy Yard,

expansion.

By Mr. O'Flaherty of Chelsea, petition (subject to Joint Rules 12 and 9) of Eugene L. O'Flaherty for legislation to extend the harbor lines for the building of certain structures over navigable waters of the Charlestown Navy Yard located in the city of Boston.

Foreclosures,
judicial
review.

By Mr. Smizik of Brookline, petition (subject to Joint Rule 12) of Frank I. Smizik and others for legislation to require judicial review of foreclosures on residential mortgages.

Engineering
teachers,
retirement.

By Ms. Spiliotis of Peabody, petition (subject to Joint Rule 12) of Joyce A. Spiliotis for legislation to grant certain creditable service for technology engineering teachers under the public employees retirement law.

Rolling Rock,
glacial rock.

By Mr. Sullivan of Fall River, petition (subject to Joint Rule 12) of David B. Sullivan for legislation to designate the glacial rock located in the city of Fall River as the glacial rock of the Commonwealth.

David
Catanzaro,
sick leave.

By Mr. Verga of Gloucester, petition (subject to Joint Rule 12) of Anthony J. Verga for legislation to establish a sick leave bank for David Catanzaro, an employee of the Trial Court of the Commonwealth.

Severally, under Rule 24, to the committee on Rules.

Health care,
financing.

Reports of Committees.

By Mrs. Walrath of Stow, for the committee on Health Care Financing, on House, Nos. 132, 538, 2048, 2112, 2126, 2128, 2129, 2208 and the residue of 4370, an Order relative to authorizing the committee on Health Care Financing to make an investigation and study of certain House bills relative to the financing of health care in the Commonwealth and other related matters (House, No. 4674).

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By the same member, for the same committee, on House, Nos. 430, 599, 1900, 1908, 2049, 2095, 2115 and 2130, an Order relative to authorizing the committee on Health Care Financing to make an investigation and study of certain House bills relative to the financing of health care in the Commonwealth and other related matters (House, No. 4675).

Cultural
Council,
funding.

By Mr. Turkington of Falmouth, for the committee on Tourism, Arts and Cultural Development, on House, No. 3920, an Order relative to authorizing the committee on Tourism, Arts and Cultural Development to make an investigation and study of a certain House document concerning funding by the Massachusetts Cultural Council (House, No. 4676).

Severally referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, in each instance, asking to be discharged from further consideration of the orders; and recommending that the same severally be referred to the House committee on Rules.

Under Rule 42, the reports severally were considered forthwith; and they were accepted.

Gang
violence,
prevention.

By Mr. Costello of Newburyport, for the committee on Public Safety and Homeland Security, on a petition, a Bill to prevent youth and gang violence (House, No. 2280).

Sex
offenders,

By the same member, for the same committee, on a petition, a Bill creating a task force to study the use of the internet by sex offenders (House, No. 2328).

internet.

By the same member, for the same committee, on a petition, a Resolve establishing a special committee to study the oversight and responsibility for responding to statewide emergencies (House, No. 2392).

Statewide
emergencies,
study.

Severally read; and referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

End of life
care.

By Mrs. Walrath of Stow, for the committee on Health Care Financing, that the Bill relative to the Massachusetts Commission on End of Life Care (House, No. 2204) ought to pass. Read; and referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Orders of the Day.

Second reading
bills and
resolve.

The Senate Resolve providing for an investigation and study by a special commission relative to the establishment of a statewide law enforcement training program (Senate, No. 1342, amended); and

The Senate Bill relative to the certification of the inspector of buildings and building commissioner in the city of Brockton (Senate, No. 2458); and

House bills

Relative to the timing of reimbursement for federal manufacturers excise tax (House, No. 3324);

Relative to the homeowners' residential tax exemption in the city of Boston (House, No. 4104);

Exempting the position of deputy fire chief in the town of Hingham from the civil service law (House, No. 4496);

Establishing a sick leave bank for a certain employee of the Department of Mental Retardation (House, No. 4567); and

Establishing a sick leave bank for Deborah A. Jones, an employee of the Department of Mental Retardation (House, No. 4928);

Severally were read a second time; and they were ordered to a third reading.

Recesses.

Recesses.

At twenty-five minutes before twelve o'clock noon, on motion of Mr. Nangle of Lowell (Mr. Donato of Medford being in the Chair), the House recessed until the hour of one o'clock P.M.; and at that time the House was called to order with Mr. Donato in the Chair.

The House thereupon took a further recess, on motion of Mr. Pedone of Worcester, subject to the call of the Chair; and at twenty-five minutes after one o'clock the House was called to order with Mr. Donato in the Chair.

The House thereupon took a further recess, on motion of Mr. Rogers of Norwood, until a quarter after two o'clock; and at half past two o'clock the House was called to order with Mr. Donato in the Chair.

The House thereupon took a further recess, on motion of Mr. Aguiar of Fall River, until ten minutes before three o'clock; and at that time the House was called to order with Mr. Donato in the Chair.

Transportation
bond.

Emergency Measure.

The engrossed Bill financing improvements to the Commonwealth’s transportation system (see House, No. 4637, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 3 to 0. Sent to the Senate for concurrence.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the House) was put upon its final passage.

Bill enacted
(state credit),
yea and nay
No. 295.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the gift, loan or pledging of the credit of the Commonwealth as defined by Section 1 of Article LXII of the Amendments to the Constitution); and on the roll call 158 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 295 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Recess.

Recess.

At five minutes after three o’clock P.M., on motion of Mr. Rushing of Boston (Mr. Donato of Medford being in the Chair), the House recessed subject to the call of the Chair; and at twenty-two minutes before four o’clock the House was called to order with the Speaker in the Chair.

Orders of the Day.

Tax
fairness.

The House Bill improving tax fairness and business competitiveness (House, No. 4645) was considered, the main question being on ordering the bill to a third reading.

The amendment previously recommended by the committee on Ways and Means,— that the bill be amended by substitution of a bill with the same title (House, No. 4656),— also was considered. On motion of Mr. DeLeo of Winthrop, there being no objection, the pending amendment was withdrawn.

Point of
order.

Pending the question on ordering the bill to a third reading, Mr. Peterson of Grafton raised a point of order that it was improperly before the House for the reason that report of the committee on Ways and Means accompanying said bill did not contain a fiscal note.

In answer to the point of Order, the Speaker stated that it was not within the province of the Chair to inquire into the internal workings of a committee. Therefore the Speaker ruled that the point of order was not well taken.

Appeal from
decision of Chair.

Mr. Jones of North Reading thereupon appealed from the decision of the Chair; and the appeal was seconded by Mr. Peterson.

Decision of
Chair

After debate on the question “Shall the decision of the Chair stand as the Judgment of the House?”, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson; and on the roll call 135 members voted in the affirmative and 19 in the negative.

sustained,
yea and nay
No. 296.

[See Yea and Nay No. 296 in Supplement.]

Therefore the decision of the Chair was sustained.

Mr. Peterson of Grafton then moved that the bill be referred to the committee on Economic Development and Emerging Technologies.

Motion to refer
negated,
yea and nay
No. 297.

After debate on the motion to refer, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call (Mr. Donato of Medford being in the Chair) 22 members voted in the affirmative and 134 in the negative.

[See Yea and Nay No. 297 in Supplement.]

Therefore the motion to refer the bill to the committee on Economic Development and Emerging Technologies was negated.

Mr. Peterson of Grafton then moved that further consideration thereof be postponed until one o’clock P.M., on Thursday, April 17.

Motion to
postpone
negated,
yea and nay
No. 298.

After debate on the motion to postpone, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 19 members voted in the affirmative and 136 in the negative.

[See Yea and Nay No. 298 in Supplement.]

Therefore the motion to postpone was negated.

After debate on the question on ordering the bill to a third reading, Mr. DeLeo of Winthrop moves to amend it by inserting after section 84 the following two sections:

“SECTION 84A. Said Section 6 of said chapter 64C of the General Laws, as so appearing, is hereby further amended by inserting at the end thereof the following paragraph:—

Notwithstanding the provisions of section 28, an amount equal to 50 mills for each cigarette so sold during the calendar month covered by the return filed under section 16 of chapter 62C shall be credited to the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29.

SECTION 84B. Section 28 of said chapter 64C of the General Laws, as so appearing, is hereby amended by striking out in line 1 the words ‘Section seven’ and inserting in place thereof the words:— Sections 6 and 7.”.

After debate the amendment was adopted.

Representatives Garry of Dracut and D’Amico of Seekonk then moved to amend the bill by striking section 89.

Amendment
rejected,
yea and nay
No. 299.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Miss Garry; and on the roll call 49 members voted in the affirmative and 105 in the negative.

[See Yea and Nay No. 299 in Supplement.]

Therefore the amendment was rejected.

The Speaker being in the Chair,—

Mr. Nangle of Lowell then moved to amend the bill be striking out sections 27 and 28 and inserting in place thereof the following two sections:

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fairness.

“SECTION 27. Section 2 of said Chapter 63, as appearing in the 2006 Official Edition, is hereby amended by striking out subsections (a), (b) and (c) and inserting in place thereof the following:—

Section 2. (a) Except as provided in subsection (c), every financial institution engaged in business in the commonwealth shall pay, on account of each taxable year, an excise measured by its net income determined to be taxable under section two A at the following rate: taxable years beginning on or after January 1, 2009 but before January 1, 2010, 9.4 percent; on or after January 1, 2010 but before January 1, 2011, 8.3 percent; on or after January 1, 2011, 7.8 percent; provided, however, that the excise imposed hereunder shall be no less than four hundred and fifty-six dollars.

(b) The commissioner is hereby authorized to adjust the net income of any taxpayer in accordance with the provisions of and the rules and regulations under section 482 of the Internal Revenue Code, as amended from time to time.

SECTION 28. Section 2 of Chapter 63 as appearing in the 2006 Official Edition, is hereby amended by striking out subsection (d) and adding the following section:—

(c) Any financial institution that is an S corporation, as defined in section 1361 of the Code, shall not be subject to the tax provided in subsection (a) and shall instead be subject to the excise set forth in Section 2B.”.

Pending the question on adoption of the amendment, Mr. Binienda of Worcester moved to amend it by striking out the text contained in said amendment and inserting in place thereof the following:—

By inserting after section 28 the following section:

“SECTION 28A. Section 2 of said chapter 63, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:—

(b) Any corporation taxable under this section and described in clause (c), (d) or (e) of the definition of ‘financial institution’ in section 1, but not described in clause (a) or (b) of said definition, shall pay an excise measured by its net income determined to be taxable under section 2A at the following rate:

(i) on account of each taxable year beginning on or after January 1, 1995, but before January 1, 2009, 10.5 per cent; or

(ii) on account of each taxable year beginning on or after January 1, 2009, but before January 1, 2010, 10.0 per cent; or

(iii) on account of each taxable year beginning on or after January 1, 2010 in which the inflation adjusted growth in baseline taxes imposed under this section in the fiscal year ending on June 30 of the previous year exceeds 2.5 per cent and the inflation-adjusted change in baseline taxes for each consecutive 3-month period reported by the commissioner between August and December of the previous year is greater than 0, a percentage equal to the rate in effect for the prior year, less 0.5 per cent; provided, however, that in no case shall the tax rate be less than 9.0 per cent; and provided, further, that in no case shall the excise imposed under this section be less than \$456.

On or before October 15 of each year, the commissioner shall submit a report to the secretary of administration, the house and senate committees on ways and means and the joint committee on

revenue providing a preliminary statement of the rate of excise to be imposed under this section for taxable years beginning on or after the following January 1. On or before December 15, the commissioner shall make a final statement of the corporate tax rate for the following year to the same recipients.

For purposes of this section, the following words shall have the following meaning:—

‘Baseline tax revenues’, the amount of state tax revenues received under this section that would have been credited to the budgeted funds had there been no change in federal or state tax law or administrative practices that affected tax collections for the year, as estimated by the commissioner.

‘Inflation adjusted change in baseline tax revenues’, the commissioner’s estimate of the percentage change from the preceding fiscal year in the amount of baseline tax revenues minus the percentage change in the consumer price index for all urban consumers for Boston as most recently reported by the federal Bureau of Labor Statistics, from the index so reported 12 months before. The estimate shall be provided to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue annually, on or before August 30 for the preceding fiscal year. Monthly, on or before the fifteenth day, the commissioner shall provide an estimate for the preceding 3 months to the same recipients.”; and

By striking out section 81 and inserting in place thereof the following section:

“SECTION 81. Chapter 63, as so appearing, is hereby amended by striking section 39 and inserting in place thereof the following section:—

Section 39. Except as otherwise provided in this section, every business corporation, organized under the laws of the commonwealth, or exercising its charter or other means of legal authority, or qualified to do business or actually doing business in the commonwealth, or owning or using any part or all of its capital, plant or any other property in the commonwealth, shall pay, on account of each taxable year, the excise provided in subsection (a) or (b), whichever is greater, except that an insurance mutual holding company established under chapter 175 or under the equivalent law of another state shall pay, on account of each taxable year, only the excise provided in clause (2) of subsection (a) or subsection (b), whichever is greater.

Without limitation, the excise levied in this section is due and payable on any 1 or all of the following alternative incidents:—

(1) The authority or qualification to carry on or do business in this state or the actual doing of business within the commonwealth. The term ‘doing business’ as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in the commonwealth, as an incident to or by virtue of the powers and privileges acquired by the nature of those organizations, as well as, the buying, selling or procuring of services or property.

(2) The exercising or continuance of a business corporation’s charter or other means of legal authority within the commonwealth.

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(3) The owning or using any part or all of its capital, plant or other property in the commonwealth.

It is the purpose of this section to require the payment of this excise to the commonwealth by a business corporation for the enjoyment under the protection of the laws of the Commonwealth, of the powers, rights, privileges and immunities derived by reason of its existence and operation.

In the case of a business corporation whose taxable year is a period of less than 12 calendar months, the portion of the amount determined under clause (1) of subsection (a) shall be multiplied by a fraction whose numerator is the number of months included in the taxable year and whose denominator is 12.

(a) An amount equal to the sum of:—

(1) \$2.60 per \$1,000 upon the value of:—

(i) its tangible property as determined to be taxable under paragraph 7 of section 30 if a tangible property corporation; or

(ii) its net worth as determined to be taxable under paragraph 8 of section 30 if an intangible property corporation; and

(2)(i) For tax years beginning before January 1, 2009, 9.50 per cent of its net income determined to be taxable in accordance with this chapter; or

(ii) For tax years beginning on or after January 1, 2009, but before January 1, 2010, 8.75 per cent of its net income determined to be taxable in accordance with this chapter; or

(iii) For tax years beginning on or after January 1, 2010 in which the inflation adjusted growth in baseline corporate taxes in the fiscal year ending on June 30 of the previous year exceeds 2.5 per cent and the inflation-adjusted change in baseline taxes for each consecutive 3-month period reported by the commissioner between August and December of the previous year is greater than 0:

1. the percentage of its net income determined to be taxable in accordance with this chapter equal to the rate in effect for the prior taxable year, less 0.75 per cent; or

2. 7.5 per cent, if the rate for the prior taxable year is 8.0 per cent; provided, however, that in no case shall the rate be less than 7.5 per cent; or

(b) \$456.

On or before October 15 of each year, the commissioner shall submit a report to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue providing a preliminary statement of the rate of excise to be imposed under this section for taxable years beginning on or after the following January 1. On or before December 15, the commissioner shall make a final statement of the corporate tax rate for the following year to the same recipients.

For purposes of this section, the following words shall have the following meaning:—

‘Baseline tax revenues’, the amount of state tax revenues received under this section that would have been credited to the budgeted funds had there been no change in federal or state tax law or administrative practices that affected tax collections for the year, as estimated by the commissioner.

‘Inflation adjusted change in baseline tax revenues’, the commissioner’s estimate of the percentage change from the preceding fiscal year in the amount of baseline tax revenues minus the percentage change in the consumer price index for all urban consumers for Boston as most recently reported by the federal Bureau of Labor Statistics, from the index so reported 12 months before. The estimate shall be provided to the secretary of administration, the house and senate committees on ways and means and the joint committee on revenue annually, on or before August 30 for the preceding fiscal year. Monthly, on or before the fifteenth day, the commissioner shall provide an estimate for the preceding 3 months to the same recipients.

A business corporation shall not be subject to the income measure of tax under clause (2) of subsection (a) if it is engaged in the business of selling tangible personal property and taxation of that business corporation under this chapter is precluded by the Constitution or laws of the United States, or would be so precluded except for the fact that the business corporation stored tangible personal property in a licensed public storage warehouse, but no portion of any warehouse which is owned or leased by a consignor or consignee of the tangible personal property shall be considered a licensed public warehouse. A business corporation exempt from the income measure of the excise under this paragraph pursuant to federal Public Law 86-272 shall nevertheless be subject to the excise under clause (1) of subsection (a) or subsection (b), whichever is greater.”

After debate on the question on adoption of the further amendments, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 135 members voted in the affirmative and 20 in the negative.

[See Ye and Nay No. 300 in Supplement.]

Therefore the further amendments were adopted, thus precluding a vote on the pending amendment.

Mr. Pignatelli of Lenox then moved to amend the bill in section 89 by adding at the end thereof the following sentence: “The provisions of this section shall not be applicable to any party in the foregoing subsections whose total gross receipts for all sales and services are less than \$1,000,000.”; and the amendment was rejected.

Mr. Wallace of Boston then moved to amend the bill in section 45 by adding at the end thereof the following:

“Section 32B of Chapter 63 is amended by adding the following new subsection:—

(h) For a combined group whose activities are included in whole or in part in sub-sector code 7922 of industry group 792 or are included in industry groups 483, 484, 781, or 782 under the standard industrial classification code as compiled by the United States Department of Labor, or whose activities involve any combination of the business activities included in those groups, the combined group’s apportionment factor numerator shall not include a share of the apportionment factors attributable to this state of members of the group with such activities that are not themselves taxable in the commonwealth, but shall include in its apportionment factor denominator the a apportionment factors associated with the combined group’s unitary business wherever located.”.

The amendment was rejected.

Further
amendments
adopted,
yea and nay
No. 300.

Tax
fairness.

Mr. Casey of Winchester then moved to amend the bill by adding at the end thereof the following seventeen sections:

“SECTION 94. Section 16 of chapter 62C of the General Laws is hereby amended by inserting after the word ‘operator’ in line 53 the following words:— or room reseller.

SECTION 95. Section 25 of chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after the word ‘operator’ in line 6 the following words:— or room reseller.

SECTION 96. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after the word ‘operator’ in line 2 the following words:— or room reseller.

SECTION 97. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by adding after paragraph (b) thereof the following paragraph:—

(b½) ‘Doing business in the commonwealth’, ownership or operation of a bed and breakfast establishment, hotel, lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth, solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that may be the subject of a cooperative arrangement between an operator and a reseller, or other exploitation of the market for accommodations or resale of accommodations located in the commonwealth by any means whatsoever, including, but not limited to, salesmen, solicitors or representatives in the commonwealth, whether such salesmen, solicitors or representatives are employed by the operator or reseller, by a person affiliated with the operator or the reseller by common ownership, or by any other party. This definition is intended to extend the jurisdiction of the commonwealth over operators and resellers to the full extent authorized by the constitution and the laws of the United States; provided, however, that nothing in this paragraph shall be interpreted as authorizing assertion of jurisdiction over an operator or reseller that lacks a direct physical presence in the commonwealth or a physical presence attributed to it by virtue of activities conducted on its behalf by another person.

SECTION 98. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby further amended by inserting after the word ‘operator’, in line 49 thereof, the following words:— or the room reseller.

SECTION 99. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby further amended by inserting at the end thereof the following new subsection:—

(k) ‘Room Reseller’ or ‘Reseller’, any person having any right, permission, license, or other authority from or through an operator to reserve or arrange transfer of occupancy of accommodations the transfer of which is subject to this chapter, such that the occupant pays all or a portion of the rent to the reseller, but such term shall not include a tour operator.

SECTION 100. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 3 thereof and inserting in place thereof the following section:—

An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator or room reseller doing business in the commonwealth at the rate of five per cent of the total amount of rent for each such occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than fifteen dollars per day or its equivalent.

The operator or room reseller shall pay the excise to the commissioner at the time provided for filing the return required by section sixteen of chapter sixty-two C.

SECTION 101. Section 3A of chapter 64G, as so appearing, is hereby amended by striking the first three sentences thereof and inserting in their place the following three sentences:—

Any city or town which accepts the provisions of this section shall be authorized to impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within such city or town by any operator or room reseller at a rate up to, but not exceeding, four per cent of the total amount of rent paid by the occupant for each such occupancy; provided, however, that the city of Boston is hereby authorized to impose such local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within said city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the occupant for each such occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than fifteen dollars per day or its equivalent or if the accommodation is exempt under the provisions of section two of this chapter. The operator or room reseller shall pay the local excise tax imposed under the provisions of this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

SECTION 102. Chapter 64G of the General Laws, as so appearing, is hereby further amended by adding after Section 3A thereof the following section:—

Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is transferred through the use of a room reseller, the application of the excise shall be as follows:

If the room reseller is required to register under Section 6 of this chapter to collect the excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the operator.

Whether or not the room reseller is so registered, the operator shall collect and pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or the occupant.

SECTION 103. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking section 4 thereof and inserting in place thereof the following section:—

Reimbursement for the excise imposed under sections 3 and 3A of this chapter shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with the requirements of sections 3 and 3A of this chapter, and such excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

SECTION 104. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 5 thereof and inserting in place thereof the following section:—

The amount of the excise collected by the operator or the room reseller under the provisions of this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer issued or used by the operator or the room reseller.

SECTION 105. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 6 thereof and inserting in place thereof the following section:—

No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of registration has been issued to him in accordance with Section 67 of chapter 62C.

SECTION 106. Section 7A of Chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after the word ‘operator’ in line 1 the following words:— or room reseller.

SECTION 107. Section 7A of Chapter 64G of the General Laws, as so appearing, is hereby further amended by inserting after the word ‘operator’ in line 7 the following words:— or room reseller.

SECTION 108. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 7B thereof and inserting in place thereof the following section:—

Every operator or room reseller who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. The terms ‘operator’ and ‘room reseller’, as used in this section, include an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 109. Section 12 of Chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after the word ‘operator’ in line 5 the following words:— and each room reseller.

SECTION 110. The commissioner may promulgate rules and regulations necessary to implement sections 1 through 16 hereof.”

After remarks the amendment was rejected.

Mr. Scaccia of Boston then moved to amend the bill by adding at the end thereof the following section:

“SECTION 94. There shall be a special commission to review the corporate tax laws of the Commonwealth. The investigation shall

include, but not be limited to, the modernization and simplification of the current business tax laws, as well as rate structure and reporting mechanisms of corporations. Said commission shall consist of the chair of the committee on house ways and means or his designee, who shall serve as chair, the house chair of the joint committee on revenue, or his designee, the house chair of the joint committee on financial services, or his designee, the house chair of the joint committee on economic development and emerging technology, or his designee, the house chair of the joint committee on telecommunications, utilities and energy, or his designee, the house chair of the joint committee on community development and small business, or his designee, two house members appointed by the speaker, and two house members appointed by the minority leader. There shall also be appointed by the Speaker four members one of whom shall represent the financial services industry, one who shall represent rate regulated utilities, and two of whom shall represent general business corporations. The commission shall collect and evaluate data, and shall file a report of the results of its investigation with the clerks of the House of Representatives on or before December 31, 2008. The report shall include recommendations and any legislation necessary to address the revision of the corporate tax laws of the commonwealth.”

The amendment was adopted; and the bill (House, No. 4645, amended) was referred, under Joint Rule 29, to the committees on Rules of two branches, acting concurrently.

Mr. Scaccia, for said committees, then reported that the bill ought to pass. Under suspension of the rules, on motion of the same member, the bill was considered forthwith.

Pending the question on ordering the bill, as amended, to a third reading, Mr. Bosley of North Adams moved to amend it by striking out section 45 and inserting in place thereof the following section:

“SECTION 45. Said chapter 63 of the General Laws, as appearing in the 2006 Official Edition, is hereby further amended by striking out section 32B and inserting in place thereof the following section:—

Section 32B. (a) General rule. Notwithstanding any other provision of this chapter, a corporation subject to tax under this chapter and engaged in a unitary business with 1 or more corporations subject to combination within the meaning of this section shall, under regulations adopted by the commissioner, calculate its taxable net income derived from this unitary business as its share, attributable to the commonwealth, of the apportionable income or loss of the combined group engaged in the unitary business, determined in accordance with a combined report.

(b) Unitary business defined.

(1) For purposes of this section, the term ‘unitary business’ shall mean the activities of a group of 2 or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the fullest extent permitted under the United States Constitution.

(2) For purposes of this section, the term 'common ownership' shall mean that more than 50 per cent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. A group of corporations under common ownership may be engaged in 1 or more unitary businesses.

(3) Any business conducted by a partnership shall be treated as the business of the partners, whether the partnership interest is directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the magnitude of the partner's ownership interest or its distributive share of partnership income. A business conducted directly or indirectly by 1 corporation is unitary with that portion of a business conducted by another, commonly owned corporation through its direct or indirect interest in a partnership if the activities conducted by the former corporation and the partnership are unitary within the meaning of paragraph (1) regardless of the magnitude of the partner's ownership interest or its distributive or any other share of partnership income.

(c) Membership in the combined group.

(1) Corporations that are subject to combination within the meaning of this section shall include an entity of the kind that is subject to tax or would be subject to tax if doing business in the state under section 2, 2B, 32D, 39 or 52A, as well as an entity described in sections 20 to 29E, inclusive, in any case in which the entity does not qualify for treatment as a life insurance company as defined in section 816 of the Code or an insurance company subject to tax imposed by section 831 of the Code. A corporation is subject to combination irrespective of whether the corporation is actually subject to tax under section 2, 2B, 32D, 39 or 52A. A corporation subject to combination includes a real estate investment trust as referenced under sections 856 to 859, inclusive, of the Code and a regulated investment company as referenced under sections 851 to 855, inclusive, of the Code. Any corporation included in the combined group pursuant to this section shall not be required to file as a separate entity pursuant to sections 2, 2B, 32D 39 or 52A.

(2) A corporation subject to combination within the meaning of this section shall not include an entity described in section 38B or 38V. In addition, an entity subject to combination within the meaning of this section shall not include an entity described in sections 20 to 29E, inclusive, except as provided in paragraph (1) or otherwise in this chapter.

(3) The members of a combined group subject to tax under this chapter may elect to determine their apportioned share of the taxable net income or loss of the combined group pursuant to a worldwide election under which each taxpayer member, wherever located, shall take into account the income and apportionment factors of all the members includible in the combined group. Otherwise, the combined group would determine its share of the taxable net income or loss of the combined group on a water's edge basis under which each member shall take into account the income and apportionment

factors of only the members that are described in any one or more of the following categories:—

(A) any member incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States but excluding any member with more than 80 percent of the average of its property, payroll and receipts sourced outside the United States;

(B) any member, regardless of the place incorporated or formed, if the average of its property, payroll, and sales factors within the United States is 20 per cent or more;

(C) any member that earns more than 20 per cent of its income, directly or indirectly, from intangible property or service-related activities the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the business income of other members of the group, but only to the extent of that income and the apportionment factors related thereto. A world wide election shall be effective only if made on a timely-filed, original return for a taxable year by the members of the combined group subject to tax under this chapter. A world wide election shall be binding for and applicable to the taxable year for which it is made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by the commissioner.

(d) Determination of combined group apportionment and tax liability.

(1) Definitions. When used in this section, the following terms shall have the following meaning:

(A) 'Combined group's taxable income,' the aggregate taxable net income or loss of every taxable member and non-taxable member of the combined group.

(B) 'Non-taxable member,' a member of the combined group that is not independently subject to tax under this chapter.

(C) 'Taxable member,' a member of the combined group that is independently subject to tax under this chapter.

(2) Apportionment. A corporation subject to tax under this chapter that is part of a combined group shall apportion its income as follows:

(A) General Rule. Subject to the rules of this subsection, each taxable member shall determine its apportionment percentage based on its specific apportionment formula pursuant to this chapter.

(B) Numerator. Each taxable member must compute the numerator of its apportionment factor(s) pursuant to the apportionment provisions of this chapter that apply to such member. Each taxable member shall add to its sales factor numerator its share of Massachusetts sales of non-taxable members based on subsection (D) below.

(C) Denominator. Each member must calculate its apportionment factor denominator(s) by (i) determining the apportionment factor denominator(s) of every member of the group based upon the apportionment provisions that apply to each member and (ii) aggregating the apportionment factor denominators of each member, regardless of whether any particular member is taxable in the commonwealth. A member shall determine its property and payroll factor denominators by including the property and payroll of all members of the

group, including members of the group subject to a single sales factor apportionment formula. A member includes in its denominators the property and payroll attributable to a member subject to a single sales factor formula pursuant to the rules under section 2A, if such other member qualifies as a financial institution as defined under section 1, or otherwise pursuant to section 38.

(D) Attribution of Sales of Non-Taxable Members. The Massachusetts sales of each non-taxable member must be determined based upon the apportionment rules applicable to such member. The resulting Massachusetts sales of non-taxable members must be aggregated. Each taxable member of the group must include in its sales factor numerator a portion of the aggregate Massachusetts sales of non-taxable members based on a ratio, the numerator of which is such taxable member's Massachusetts sales taking into account its applicable sales factor provisions and the denominator of which is the aggregate Massachusetts sales of all the taxable members of the group taking into account their respective sales factor provisions. For purposes of determining whether sales are in the commonwealth and included in the numerator of the sales factor, a taxpayer is considered taxable in any state in which any member of its combined group is subject to tax.

(E) Elimination of Intercompany Transactions. In computing the apportionment percentage of combined group members, each member must eliminate intercompany transactions.

(3) Taxable Net Income or Loss. To arrive at each member's apportioned taxable net income or loss, each member shall apply its apportionment percentage, as determined under subparagraphs (A) to (E), inclusive, of paragraph (2), to the combined group's taxable income, as defined in subparagraph (A) of paragraph (1).

(4) Tax. Each taxable member shall multiply its apportioned taxable net income or loss by the tax rate applicable to such member pursuant to the provisions of this chapter.

(e) Liability. Every member of the combined group shall be jointly and severally liable for the tax due from any taxpayer member under this chapter, including any interest and penalties, to the extent permitted under the United States Constitution.

(f) Regulations. The commissioner shall adopt regulations to implement this section and to coordinate the application of this section with the other provisions of this chapter.

(1) the elimination of intercompany transactions, including but not limited to the payments of dividends, between or among combined group members, and the elimination or deferral of income, expenses, apportionment factors or other tax items associated with those transactions;

(2) the sharing within the combined group of credits that may be validly claimed by a taxpayer and that are attributable to the combined group's unitary business, to the extent such sharing of credits by a particular member of the combined group is consistent with the statutory requirement for claiming such a credit, taking into account the nature of such member's business, activities, etc.;

(3) the application of any carry forwards, including the sharing of any net operating loss or tax credit carry forwards that are attribut-

able to the activities of the combined group's unitary business, but the carry forward of losses, credits or other tax benefits that arise before the effective date of this section shall be available only to the extent permitted by law as in effect before the effective date; and

(4) the relationship to this section of the provisions set forth in sections 31I to 31K, inclusive.

(g) Affiliated Group Election.

(i) Definitions. When used in this section, the following terms shall have the following meaning.

'Affiliated group' is defined pursuant to Section 1504 of the Code and includes all corporations that are commonly owned, directly or indirectly, by any member of such affiliated group.

'Commonly owned' shall mean more than 50 percent of the voting control of such member(s) is directly or indirectly owned by a common owner or owners, either corporate or non-corporate.

(ii) A taxpayer may elect, without the consent of the commissioner, to treat as its Massachusetts combined group all corporations that are members of its affiliated group.

The corporations referred to above shall include members of such affiliated group that are subject to tax or that would be subject to tax if doing business in the state under sections 2, 2B, 32D, 39 or 52A. Such affiliated group shall calculate Massachusetts taxable income in accordance with subsection (d). Any such election shall be made on an original, timely filed return by any member of the combined group. Any corporation entering an affiliated group subsequent to the year of election must be included in the Massachusetts combined group and is considered to have waived any objection to its inclusion in the Massachusetts combined group. Such election shall be binding for and applicable to the taxable year for which it is made and for the next 9 taxable years and shall continue to remain in effect until terminated by the combined group. Such election may be terminated without the consent of the commissioner after it has been in effect for 10 taxable years. The termination shall be made on an original, timely filed return for the first taxable year in which the federal consolidated group election is to be terminated.

(h) Adjustments for Changes in Net Deferred Tax Liabilities or Assets

(1) If book-tax differences for the fiscal period ending during the year of enactment of this section result in an increase to a net deferred tax liability or decrease to a net deferred tax asset for any taxpayer affected by this section, taxpayer shall be entitled to a deduction, subject to paragraph (2) of this subsection (h), equal to one-fifth of the book-tax differences creating the increase in the net deferred tax liability or decrease in the net deferred tax asset of the taxpayer in each of the five years beginning with the 2010 taxable year of such taxpayer. If this deduction results in a net operating loss in any tax year, the unused deduction may be carried forward indefinitely by the combined group and deducted without regard to any limitation.

(2) The deduction under paragraph (1) of this subsection (h) shall not exceed the amount necessary to offset the increase in the net deferred tax liability or the decrease in the net deferred asset of the

taxpayer as computed in accordance with generally accepted accounting principles that would otherwise result from the imposition of the excise tax under this section 32B for any taxpayer affected under this section, if the deduction provided under this subsection (h) were not allowed. This deduction shall be applied to affiliates at the taxpayer's election."

The amendment was adopted.

Mr. DeLeo of Winthrop then moved to amend the bill by striking out section 93 and inserting in place thereof the following two sections:

"SECTION 93. Sections 1 to 84, inclusive, sections 85 to 88, inclusive, and 90 to 92, inclusive, shall be effective for tax years beginning on or after January 1, 2009.

SECTION 94. Sections 84A, 84B and 89, shall be effective July 1, 2008."

After remarks on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 114 members voted in the affirmative and 40 in the negative.

[See Yea and Nay No. 301 in Supplement.]

Therefore the amendment was adopted.

Mr. Donelan of Orange then moved to amend the bill in section 97 by adding at the end thereof the following sentence: "Businesses located within 10 miles of the New Hampshire border shall be exempt from the provisions of this section."

On the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 20 members voted in the affirmative and 135 in the negative.

[See Yea and Nay No. 302 in Supplement.]

Therefore the amendment was rejected.

The Speaker then interrupted the pending business and, there being no objection, placed before the House the question on suspension of Rule 1A in order that the House might continue to meet beyond the hour of nine o'clock P.M.

On the question on suspension of Rule 1A, the sense of the House was taken by yeas and nays, as required under the provision of said rule; and on the roll call 134 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 303 in Supplement.]

Therefore Rule 1A was suspended.

On the question on ordering the bill, as amended, to a third reading, the sense of the House was taken by yeas and nays, at the request of Mr. Binienda of Worcester; and on the roll call 134 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 304 in Supplement.]

Therefore the bill, as amended, was ordered to a third reading.

At twenty-five minutes after eight o'clock P.M., on motion of Mr. Binienda of Worcester (the Speaker being in the Chair), the House recessed until half past nine o'clock; and at twelve minutes before ten o'clock the House was called to order with Mr. Donato of Medford in the Chair.

Under suspension of the rules, on motion of Mr. Binienda of Worcester, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time forthwith.

Pending the question on passing the bill, as amended, to be engrossed, Mr. Falzone of Saugus moved to amend it in section 95 (as changed by said committee) by striking out the words "rate regulated utilities, and two" and inserting in place thereof the words "rate regulated utilities, one of whom shall represent the telecommunications industry, and one".

The amendment was adopted.

On the question on passing the bill, as amended, to be engrossed, Mr. Peterson of Grafton asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Donato of Medford), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call (the Speaker being in the Chair) 150 members were recorded as being in attendance.

[See Yea and Nay No. 305 in Supplement.]

Therefore a quorum was present.

After debate on the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 131 members voted in the affirmative and 23 in the negative.

[See Yea and Nay No. 306 in Supplement.]

Therefore the bill, as amended, was passed to be engrossed. Mr. Binienda of Worcester moved that this vote be reconsidered; and the motion to reconsider was considered forthwith and it was negatived. The bill (House, No. 4672, printed as amended) then was sent to the Senate for concurrence.

Order.

On motion of Mr. DeLeo of Winthrop,—

Ordered, That when the House adjourns today, it adjourn to meet on Monday next at eleven o'clock A.M.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at twenty-two minutes after ten o'clock P.M., on motion of Mr. Donato of Medford (the Speaker being in the Chair), the House adjourned, to meet on Monday next at eleven o'clock A.M., in an Informal Session.

Amendment adopted, yea and nay No. 301.

Amendment rejected, yea and nay No. 302.

Suspension of Rule 1A.

Rule 1A suspended, yea and nay No. 303.

Bill ordered to a third reading, yea and nay No. 304.

Recess.

Quorum.

Quorum, yea and nay No. 305.

Bill passed to be engrossed, yea and nay No. 306.

Next sitting.